

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05-CR-213

USA)
)
 v.) ORDER
)
 RANDOLPH HARRIS AUSTIN (1))
)
_____)

THIS MATTER is before the Court upon motion of the defendant pro se¹ to dismiss the indictment² based on a claim relating to the chain of custody of evidence seized at his arrest on May 12, 2016. (Doc. No. 238).

Under Federal Rule of Evidence 901, a district court merely acts as a gatekeeper for the jury to ensure that the proponent of a piece of evidence makes a prima facie showing of its authenticity. United States v. Summers, 666 F.3d 192, 201 (2011). However, a court may not review the sufficiency of the evidence supporting an indictment in considering a motion to dismiss. United States v. Willis, 346 F.3d 476, 488 (4th Cir. 2003). Therefore, the defendant's claim, which is not supported by legal authority, does not establish a defect in the indictment. Fed. R. Crim. P. 12(b)(3)(B).

IT IS THEREFORE ORDERED that the defendant's motion, (Doc. No. 238), is **DENIED**.

¹ The defendant has elected to represent himself with court-appointed stand-by counsel. (Doc. No. 237: Order).

² The defendant has two matters pending before the Court: an alleged supervised release violation in this case, in which the defendant filed the instant motion, (Doc. No. 216: Petition; Doc. No. 219: Addendum), and a recently indicted case (Case No. 3:16-cr-277, Doc. No. 1: Indictment). Both the Addendum and the Indictment involve the charge of possession with intent to distribute cocaine base on May 12, 2016.

The Clerk is directed to certify copies of this order to the defendant, stand-by counsel for the defendant, and to the United States Attorney.

Signed: November 15, 2016



Robert J. Conrad, Jr.
United States District Judge

